



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2017-0130; FRL-9970-68-Region 9]**

### **Revisions to California State Implementation Plan; Bay Area Air Quality Management District; Emission Reduction Credit Banking**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing action on a revision to the Bay Area Air Quality Management District (BAAQMD or District) portion of the California State Implementation Plan (SIP). We are finalizing a conditional approval of one rule. This revision consists of updates to provisions governing the issuance and banking of Emission Reduction Credits for use in the review and permitting of major sources and major modifications under part D of title I of the Clean Air Act (CAA).

**DATES:** This rule will be effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket No. EPA-R09-OAR-2017-0130. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please

contact the person identified in the “FOR FURTHER INFORMATION CONTACT” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Laura Yannayon, EPA Region 9, (415) 972-3534, *yannayon.laura@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, the terms “we,” “us,” and “our” refer to EPA.

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### **I. Proposed Action**

On September 14, 2017 (82 FR 43202), the EPA proposed a conditional approval of the following rule that was submitted for incorporation into the BAAQMD portion of the California SIP.

**Table 1 - Submitted Rule**

<b>Regulation &amp; Rule Number</b>	<b>Rule Title</b>	<b>Adopted /Amended</b>	<b>Submitted</b>
Regulation 2, Rule 4 (Rule 2-4)	Permits, Emissions Banking	12/19/12	4/22/13

We proposed a conditional approval of Regulation 2, Rule 4 because we determined that, separate from the deficiencies listed in Section II.B of our proposed rulemaking action, the rule: ensures that issued ERCs will meet the criteria laid out in 40 CFR 51.165(a)(3)(ii)(C)(I)(i) at the time of ERC issuance; satisfies the requirements of 40 CFR 51.165(a)(3)(i); satisfies the

applicable requirements found in EPA's Emissions Trading Policy Statement; and satisfies the requirements of 40 CFR 51.165(a)(3)(ii)(C)(I)(ii), which requires pre-base year shutdown credits to be explicitly added back in to the most recent applicable air quality plans. Moreover, we concluded that if the District submits the changes it committed to submit in its August 28, 2017 commitment letter, the identified deficiencies will be cured.

## **II. Public Comments and EPA Responses**

The EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## **III. EPA Action**

No comments were submitted. Therefore, as authorized in sections 110(k)(4) and 301(a) of the Act, the EPA is finalizing conditional approval of Regulation 2, Rule 4 into the BAAQMD portion of the California SIP. If the State meets its commitment to submit the required measures, the revisions to Rule 2-4 will remain a part of the SIP until EPA takes final action approving or disapproving the new SIP revisions. However, if the State fails to submit these revisions within the required timeframe, the conditional approval will automatically become a disapproval, and EPA will issue a finding of disapproval. EPA is not required to propose the finding of disapproval.

There are no sanctions or Federal Implementation Plan (FIP) implications should the conditional approval become a disapproval. Sanctions would not be imposed under CAA section 179(b) because the submittal of Rule 2-4 is discretionary (i.e., not required to be included in the SIP). *See* ETPS, 51 FR 43,813 at 43,825 (“[S]tates are by no means required to adopt banking procedures, but . . . banks may help states and communities realize important planning and environmental benefits.”). A FIP would not be imposed under CAA section 110(c)(1) because

the disapproval does not reveal a deficiency in the SIP that such a FIP must correct. Specifically:

- (1) the deficiencies identified herein do not impact or undermine the requirement that offsets satisfy the requirements of 40 CFR 51.165, including the requirement that offsets must satisfy the offset integrity criteria enumerated in 40 CFR 51.165(a)(3)(ii)(C)(I)(i) at the time of use; and
- (2) Rule 2-4 is not a required CAA submittal because states and air districts have the discretion, but are not required, to adopt banking rules. This final action will incorporate the submitted rule into the SIP, including those provisions identified as deficient.

In addition, because we are finalizing our proposed action, we are removing existing Regulation 2, Rule 4 from the BAAQMD portion of the California SIP.

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of BAAQMD Regulation 2, Rule 4 (Permits, Emissions Banking), as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, this document generally available electronically through [www.regulations.gov](http://www.regulations.gov) and in hard copy at the U.S. Environmental Protection Agency, Region IX (Air-3), 75 Hawthorne Street, San Francisco, CA, 94105-3901.

#### **V. Statutory and Executive Order Reviews**

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. *Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

*B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by state law.

*C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

*D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*F. Executive Order 13175: Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not

impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

*H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

*K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after the date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, New Source Review, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: October 31, 2017.

Deborah Jordan,  
Acting Regional Administrator,  
Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

**Subpart F – California**

2. Section 52.220 is amended by adding paragraphs (c)(199)(i)(A)(10) and (c)(429)(i)(E)(3) to read as follows:

**§52.220 Identification of plan – in part.**

\* \* \* \* \*

(c) \* \* \*

(199) \* \* \*

(i) \* \* \*

(A) \* \* \*

(10) Previously approved on January 26, 1999 in paragraph (c)(199)(i)(A)(8) of this section and now deleted with replacement in (c)(429)(i)(E)(3), Regulation 2, Rule 4 adopted on June 15, 1994.

\* \* \* \* \*

(429) \* \* \*

(i) \* \* \*

(E) \* \* \*

(3) Regulation 2, “Permits,” Rule 4, “Emissions Banking,” adopted on December 19, 2012.

\* \* \* \* \*

3. Section 52.248 is amended by adding paragraph (c) to read as follows:



**§52.248 Identification of plan – conditional approval.**

\* \* \* \* \*

(c) The EPA is conditionally approving a California State Implementation Plan (SIP) revision submitted on April 22, 2013, updating Regulation 2 – Permits, Rule 4 – Emissions Banking. The conditional approval is based on a commitment from the State to submit a SIP revision that will correct the identified deficiencies in this rule. If the State fails to meet its commitment by November 1, 2018, the conditional approval is treated as a disapproval.

[FR Doc. 2017-25927 Filed: 12/1/2017 8:45 am; Publication Date: 12/4/2017]